

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1622

Introduced by Senator Perata

February 20, 2004

An act relating to the Oakland Estuary.

LEGISLATIVE COUNSEL'S DIGEST

SB 1622, as amended, Perata. ~~Oakland Estuary Reconfiguration and Trust~~ *Oak Street to 9th Avenue District Exchange Act.*

Through a series of grants, the City of Oakland acquired certain tidelands and submerged lands as public trust lands. Existing law authorizes the City of Oakland to use that property in conformance with those grants and the public trust.

This bill would ~~state the intent of the Legislature to enact the Oakland Estuary Reconfiguration and Trust Oak Street to 9th Avenue District Exchange Act~~ to authorize and establish conditions for an exchange of certain tidelands *and submerged lands* granted to the City of Oakland for other lands not now subject to the public trust.

The bill would declare that, due to the unique circumstances pertaining to the trust lands described in the bill, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2



1 *SECTION 1. This act shall be known, and may be cited, as the*
2 *Oak Street to 9th Avenue District Exchange Act.*

3 *SEC. 2. For purposes of this act, the following definitions*
4 *apply unless the context requires otherwise.*

5 *(a) "1911 grant" means Chapter 654 of the Statutes of 1911, as*
6 *amended by Chapter 146 of the Statutes of 1939, Chapter 1737 of*
7 *the Statutes of 1965, and Chapter 1016 of the Statutes of 1981.*

8 *(b) "1960 grant" means Chapter 15 of the Statutes of 1960,*
9 *First Extraordinary Session.*

10 *(c) "After-acquired trust lands" means all or any portion of the*
11 *Oak Street to 9th Avenue property that is not historic tide and*
12 *submerged lands, whose title is not derived from the legislative*
13 *grants and that was acquired with public trust funds derived from*
14 *port operations.*

15 *(d) "Area of the estuary plan" means those lands encompassed*
16 *within that area between Adeline Street on the West, Interstate 880*
17 *on the North, the south Bank of Damon Slough on the East, and the*
18 *estuary shoreline on the South.*

19 *(e) "BCDC" means the San Francisco Bay Conservation and*
20 *Development Commission.*

21 *(f) "Charter" means the Charter of the City of Oakland, as*
22 *amended.*

23 *(g) "City" means the City of Oakland or the Town of Oakland*
24 *as applicable.*

25 *(h) "Commission" means the State Lands Commission.*

26 *(i) "Estuary" means that arm of San Francisco Bay being a*
27 *body of tidal water lying between the city on the east and north, the*
28 *City of Alameda on the west and south and including both the*
29 *Middle and Outer Harbor of the port encompassed within the*
30 *legislative grants.*

31 *(j) "Estuary plan" means the estuary policy plan of the city and*
32 *the port, accepted by the Board of Port Commissioners on*
33 *February 10, 1999, and adopted by the city on June 8, 1999,*
34 *including any subsequent amendment to the extent any subsequent*
35 *amendment may be consistent with the public trust or the*
36 *legislative grants.*

37 *(k) "Final trust lands" means those lands within the Oak Street*
38 *to 9th Avenue property that will be confirmed as subject to the*
39 *public trust and to the Oak Street to 9th Avenue legislative grants*
40 *upon the completion of the sale and exchange authorized by this*

act and are generally depicted in the diagram referenced in Section 13.

(l) “Granted lands” means the portion of the Oak Street to 9th Avenue property that is historic tide and submerged lands held by the city pursuant to the Oak Street to 9th Avenue legislative grants and that is managed or controlled by the port pursuant to the charter.

(m) “Legislative grants” means those certain grants of salt marsh, tidelands, and submerged lands by the Legislature to the city for public trust purposes. The Oak Street to 9th Avenue legislative grants is one of these grants.

(n) “Middle Harbor” means those lands lying south and west of Middle Harbor Road and consisting of berths 55 through 63 as well as those lands encompassed within berths 67 through 68 that are part of what is currently known as the Inner Harbor.

(o) “Oak Street to 9th Avenue exchange lands” means those portions of the granted lands that are, subject to the findings of the commission required by this act, no longer needed or required for the promotion of the public trust or the purposes set forth in the Oak Street to 9th Avenue legislative grants.

(p) “Oak Street to 9th Avenue legislative grants” means the 1911 grant and the 1960 grant to the city by the Legislature of salt marsh, tidelands, and submerged lands for public trust purposes and encompassing all or a part of the Oak Street to 9th Avenue property.

(q) “Oak Street to 9th Avenue property” or the “property” is shown for reference purposes in _____, and means that certain land lying in the City of Oakland, County of Alameda, State of California whose perimeter description follows:

(r) “Outer Harbor” means those lands encompassing berths 8 through 38, the former Oakland Army Base and lands adjacent thereto.

(s) “Port” means, as the context requires, the Port Department of the city, or all of the lands granted to the city by the legislative grants and all after-acquired trust lands, together with the improvements to those lands.

(t) “Port improvement plans” means those capital projects or plans adopted or implemented by the Board of Port Commissioners of the port that are in furtherance of the legislative

1 grants or the public trust and will be located within or adjacent to
2 the Middle Harbor or Outer Harbor.

3 (u) “Public trust” or “trust” means the public trust for
4 commerce, navigation, and fisheries.

5 (v) “Trust exchange parcel” means a parcel or parcels of land
6 selected by the port and approved by the commission that meet the
7 criteria set forth in subdivision (b) of Section 4.

8 SEC. 3. The Legislature finds and declares all of the
9 following:

10 (a) The purpose of this act is to authorize reconfiguration of
11 certain public trust lands within one area of the estuary plan,
12 specifically the Oak Street to 9th Avenue district. The
13 authorization will effectuate the principles and objectives
14 contained in regional and local land use plans, especially the
15 estuary plan, the San Francisco Bay Plan and the San Francisco
16 Bay Area Seaport Plan (both adopted by BCDC), and the port
17 improvement plans, to the extent that they are consistent with the
18 public trust. The completion of the reconfiguration of public trust
19 lands will further the purposes of the public trust and the Oak
20 Street to 9th Avenue legislative grants, and, if the trust exchange
21 parcels lie outside of the lands encompassed within the Oak Street
22 to 9th Avenue legislative grants or the area of the estuary plan, the
23 legislative grants. To achieve these purposes, this act approves and
24 authorizes the port to carry out and the commission to approve and
25 to effectuate a sale and an exchange of lands, provided that the
26 commission makes the necessary findings supporting the sale and
27 exchange. Through the sale and exchange, certain lands within the
28 Oak Street to 9th Avenue property presently subject to the public
29 trust and the Oak Street to 9th Avenue legislative grants and no
30 longer useful for public trust purposes will be freed from public
31 trust ownership and use restrictions. Through a sale, significant
32 funds will be generated for the port to apply to public trust
33 purposes. Through an exchange, the trust exchange parcel will be
34 brought into public trust ownership and made subject to the public
35 trust and the Oak Street to 9th Avenue legislative grants or the
36 legislative grants, as applicable, and the title to the final trust
37 lands will be confirmed.

38 (b) Commencing in 1852, the city received a series of grants of
39 public trust lands from the Legislature.

(c) Certain of the legislative grants, including the Oak Street to 9th Avenue legislative grants, purport to encompass the entirety of the Oak Street to 9th Avenue property. In addition, some or all of the Oak Street to 9th Avenue property was included within the perimeter description of Tideland Survey No. 22, which may have been invalid. Other parts of the property may have been included within Rancho San Antonio, parts of which were confirmed and patented to Antonio Maria Peralta in June 1874, and other parts of which were confirmed and patented to Domingo and Vincente Peralta in February 1877. Because of these and possibly other factors related to the land title history of portions of the Oak Street to 9th Avenue property, there is uncertainty as to land titles within the property and the actual location of the boundaries of the granted lands and the after-acquired trust lands.

(d) The Oak Street to 9th Avenue property abuts the estuary on either side of the arm of the estuary which continues on to Lake Merritt. It has historically been used for industrial purposes, including shipping. The Oak Street to 9th Avenue property includes both granted lands and after-acquired trust lands. The title to, and boundary between, the granted lands and the after-acquired trust lands are uncertain, and will be settled by the port and the commission in connection with the exchange authorized by this act.

(e) In connection with a highly beneficial program of harbor development, the majority of the Oak Street to 9th Avenue property has been filled and reclaimed. As described below, the Oak Street to 9th Avenue exchange lands are, subject to the findings of the commission required by this act, no longer needed or required for the promotion of the public trust or any of the purposes set forth in the Oak Street to 9th Avenue legislative grants. Other portions of the property, the final trust lands, not now available for certain public trust uses, are or will be made or improved to be useful for other public trust purposes, including, but not limited to, services to visitors, habitat for plants and animals, or public parks and recreation. In addition, through the settlement and exchange authorized by this act, any uncertain title within the final trust lands thereof will be settled as sovereign lands subject to the public trust and the Oak Street to 9th Avenue legislative grants.

(f) In 1927, the port was established by amendment to the charter. According to the charter, the purpose of the port is to

1 *promote and ensure the comprehensive and adequate development*
2 *of the Port of Oakland through continuity of control, management,*
3 *and operation, including the lands held by the city pursuant to the*
4 *legislative grants. The Board of Port Commissioners, in whom the*
5 *charter vests control of the port, has the complete and exclusive*
6 *power, and the duty, on behalf of the city, to manage the port,*
7 *including the Oak Street to 9th Avenue property. The port controls*
8 *and manages more than 17,000 acres of lands on which it operates,*
9 *among other public trust functions, marine cargo terminals and an*
10 *international airport.*

11 (g) *In response to, among other matters, regional and local*
12 *environmental concerns, the increasing size of container vessels*
13 *and containers and need for greater efficiency in moving*
14 *containers to their destinations with the least relative*
15 *environmental impact, the port is in the process of consolidating,*
16 *reconfiguring, or expanding its existing marine terminals*
17 *pursuant to port improvement plans. Port improvement plans are*
18 *intended to result in port maritime terminal facilities that will*
19 *allow the port to achieve the year 2020 cargo throughput demand*
20 *forecasts set forth in the BCDC's San Francisco Bay Area Seaport*
21 *Plan.*

22 (h) *BCDC's San Francisco Bay Area Seaport Plan projected*
23 *cargo handling requirements within the Oak Street to 9th Avenue*
24 *property are supported by an analysis of cargo needs and facilities*
25 *throughout the San Francisco Bay Area. Prior to 2003, BCDC's*
26 *San Francisco Bay Area Seaport Plan designated certain areas of*
27 *the port for port priority use, including a portion of the Oak Street*
28 *to 9th Avenue property, the 9th Avenue Terminal, which was used*
29 *to handle break bulk cargo. In 2003, BCDC removed the port*
30 *priority use designation from the 9th Avenue Terminal, finding that*
31 *the regional demand for handling break bulk cargo was adequately*
32 *met by the remaining region wide capacity. In addition, in*
33 *recognition of the improved efficiencies and increased maritime*
34 *cargo capability proposed in port improvement plans and to ensure*
35 *the availability of adequate land for port ancillary uses BCDC*
36 *amended the San Francisco Bay Plan and the San Francisco Bay*
37 *Area Seaport Plan in 2001 to add certain lands to its designated*
38 *port priority use area, retain the port priority use designation over*
39 *other areas of the port, and remove the designation from other port*
40 *lands.*

(i) With respect to the Oak Street to 9th Avenue property, a portion of the property was a break bulk cargo terminal until the terminal ceased operation in about 1998. There are dredging depth limits beginning to the west of the property as a result of the Posey and Webster Tubes which provide vehicular access to the City of Alameda. The dredging depth limits the size of break bulk or container carriers that can access any terminal lying within the property. Further, the break bulk terminal that had existed would have required extensive repairs and remediation of pollution if it were to continue to accept cargo. The port concluded that break bulk cargo deliveries would not generate sufficient revenue to support costs of remediation and renovation of the terminal. Other regional ports with less container capability have absorbed the shipments that previously took place at the terminal on the property.

(j) The only currently operating industrial facility within the Oak Street to 9th Avenue property is a sand and gravel operation, which the port has leased to the sand and gravel operator through 2015. The continued operation of this facility beyond its current lease term is incompatible with contemplated public uses set forth in the estuary plan, including visitor access and shoreline improvement and circulation within the Oak Street to 9th Avenue property.

(k) When the break bulk and other industrial uses were active within the Oak Street to 9th Avenue property, they cut off or prevented public access, closed or narrowed view corridors, and prohibited or made impossible open space amenities that would draw and permit the public to use and enjoy the estuary. The public, local and regional agencies, and national groups voiced significant concerns about the condition, use of, and access to the estuary and its shoreline. These concerns instigated public examination and reconsideration of land uses and facility operations along the estuary and made concrete the regional desire to revive the estuary waterfront. The estuary plan was the result and sets forth standards regarding protection and promotion of public uses along the estuary within and beyond the Oak Street to 9th Avenue property.

(l) The estuary plan recognizes that the estuary is a public resource of city, regional, and state-wide significance. The plan is intended to promote and strengthen a sense of community, to bring

1 people to the waterfront to revitalize the estuary shoreline and to
2 make it an inviting and vibrant part of the Bay Area. That this is
3 a shared regional goal is evidenced by the adoption of City
4 Measure DD, a nearly \$200,000,000 bond issue to, among other
5 matters, restore and help provide access to the estuary.

6 (m) The estuary plan also recognizes that continued siting of
7 new heavy industrial facilities using, handling, storing, or
8 generating pollutants next to a sensitive, publicly visible waterway
9 is no longer appropriate for certain portions of the estuary
10 shoreline, including the shoreline of the Oak Street to 9th Avenue
11 property.

12 (n) The Oak Street to 9th Avenue property, as currently
13 configured and in its present state, is constrained by conditions
14 that make it difficult for redevelopment and require either a public
15 or private entity to assume the considerable costs necessary to
16 make any redevelopment possible. These present constraints
17 include poor freeway and public transportation access, site
18 contamination, unstable soils, and relatively poor infrastructure.

19 (o) While significant changes in container vessels, container
20 shipping and processing, and land use plans have made portions
21 of the Oak Street to 9th Avenue property no longer useful for
22 shipping purposes, other portions of the property remain valuable
23 to the public trust for, among other matters, shoreline circulation,
24 service to visitors, parks, and habitat for plants and animals. These
25 portions of the property are not now accessible to the public and
26 require improvement and remediation.

27 (p) There are other public trust uses for which the Oak Street
28 to 9th Avenue property is not currently needed or useful: oil and
29 gas development; airports; vehicular bridges and other
30 water-dependent or water-related commercial transportation
31 facilities (other than possible ferry service or boat landings);
32 warehousing and storage of commercial goods related to port and
33 airport use (because of the distance from existing large rail and
34 container storage and movement yards at the port and inadequate
35 truck access to I-880); maritime offices (because there is no market
36 for new maritime office space within the property due to the
37 existence of existing or planned maritime office space closer to
38 downtown Oakland and to existing maritime and airport
39 facilities); and hotels (because of the location of the property



1 *between other port sites with substantial number of hotel rooms*
2 *and plans for future expansion).*

3 *(q) The port has encouraged development of significant public*
4 *access and open space along the Oak Street to 9th Avenue property*
5 *shoreline by removing defunct and dilapidated industrial uses, and*
6 *then soliciting proposals for redevelopment that would include*
7 *access and open space opportunities. A mixed-use development*
8 *has been proposed for the property. That improvement is part of the*
9 *port's efforts to redevelop and to transform the shoreline in the Oak*
10 *Street to 9th Avenue property area by converting the property into*
11 *a vital waterfront district. The redevelopment of the property will*
12 *revitalize, remediate, renew, and make accessible a now*
13 *inaccessible and decayed waterfront area. This development will*
14 *create trails, paths, view corridors, and significant public spaces*
15 *enhancing public trust lands remaining following a sale and*
16 *exchange, and will provide new public access and circulation to*
17 *an area long cut off from the region.*

18 *(r) Although a substantial portion of the Oak Street to 9th*
19 *Avenue property is now no longer needed or required for the*
20 *promotion of the public trust, other portions of the property are of*
21 *value to the public trust, and are needed and required for*
22 *water-related recreation such as boat launching and marinas, for*
23 *open space, public access, circulation, and similar uses, and*
24 *perhaps for commercial visitor-serving facilities including, but not*
25 *limited to, food service. Absent a trust exchange and sale, certain*
26 *interior lands not useful for trust purposes would be restricted to*
27 *trust-consistent uses and could not be used for residential or other*
28 *nontrust uses as a part of a mixed use project that establishes,*
29 *promotes, and maintains public trust uses on the waterfront and*
30 *near-shoreline portions of the property and facilitates public trust*
31 *purposes and goals including those set forth in the estuary plan,*
32 *other applicable land use plans, to the extent they are consistent*
33 *with the public trust, and the legislative grants, including the Oak*
34 *Street to 9th Avenue legislative grants.*

35 *(s) A trust exchange of the Oak Street to 9th Avenue exchange*
36 *lands and sale of a portion of after-acquired trust lands resulting*
37 *in the geographic configuration and extent of the final trust lands*
38 *substantially as shown on the diagram contained in Section 13*
39 *maximizes the overall benefits to the trust, without interfering with*
40 *trust uses or purposes. Following an exchange and sale, all lands*

1 within the Oak Street to 9th Avenue property adjacent to the
2 waterfront, as well as interior lands determined by the port and the
3 commission to retain public trust value, will remain subject to the
4 public trust. The lands that will be removed from the trust pursuant
5 to the exchange and sale, subject to approval of the commission,
6 are landward of navigable waters and are no longer needed or
7 required for the promotion of the public trust. The Oak Street to 9th
8 Avenue exchange lands to be freed of the public trust constitute a
9 relatively small portion of the lands granted to the city by the
10 legislative grants. This act requires that the commission ensure
11 that the trust exchange parcel added to the trust pursuant to the
12 exchange is of equal or greater value than the Oak Street to 9th
13 Avenue exchange lands taken out of the trust.

14 (t) The completion of the sale and exchange authorized by this
15 act will have numerous benefits to the public trust. These benefits
16 include, but are not limited to, all of the following:

17 (1) The repair and enhancement of the shoreline within the Oak
18 Street to 9th Avenue property through the creation or improvement
19 of a wide variety of open space areas, bike trails, walking and
20 jogging paths, marinas, an aquatic/sailing center, a maritime
21 museum, restaurants, and small-scale, visitor-serving retail.

22 (2) Access to more than a mile of now inaccessible shoreline
23 across the entirety of the waterfront of the property.

24 (3) In conjunction with the redevelopment of the property,
25 remediation of soil contamination to improve water quality in the
26 estuary.

27 (4) A significant deposit of money to the port fund, generated
28 from the sale of the after-acquired trust lands, to be used for public
29 trust purposes.

30 (5) Acquisition of the trust exchange parcel useful to, in support
31 of, and consistent with the public trust and the purposes or
32 objectives of the estuary plan, or the port improvement plans, as
33 applicable, to the extent they are consistent with the public trust.

34 (6) Settlement of title issues.

35 The trust exchange parcel shall be selected by the port, subject
36 to commission approval. The trust exchange parcel shall be owned
37 as a public trust asset and subject to the public trust and to either
38 the legislative grants, including the Oak Street to 9th Avenue
39 legislative grants, or to the legislative grants, according to the
40 location of the trust exchange parcel.

(u) *The completion of the authorized exchange and acquisition of the trust exchange parcel and the sale of after acquired trust lands will produce or support revenue generation by port for port operations by, among other means, increasing visitor activities within the port and by assisting remediation of the Oak Street to 9th Avenue property.*

(v) *It is, therefore, the intent of the Legislature, on and subject to the terms and conditions set forth in this act, to authorize, ratify, and confirm any agreement between the commission and the port to enter into and effectuate an exchange of lands within the Oak Street to 9th Avenue property and a sale of after-acquired trust lands, as the port may propose and the commission may approve pursuant to this act and to terminate the public trust and the Oak Street to 9th Avenue legislative grants over the Oak Street to 9th Avenue exchange lands consistent with the findings and declarations stated in this act.*

(w) *The Legislature reaffirms and adopts those findings contained in Section 8602 of the Public Resources Code.*

(x) *The findings made in this act are applicable only to the transactions authorized and approved by Section 4.*

SEC. 4. *The Legislature hereby approves the following transactions within the Oak Street to 9th Avenue property: a land exchange of the Oak Street to 9th Avenue exchange lands and a sale for fair market value of a portion of the after-acquired trust lands. Through the exchange and sale, certain lands within the property that meet the criteria set forth in this act and therefore are not now useful for public trust purposes will be freed from the public trust and may be conveyed into private ownership, certain other lands that are useful for public trust purposes and are not now subject to the public trust or the legislative grants will be made subject to the public trust and to the Oak Street to 9th Avenue legislative grants or to the legislative grants, as applicable, and the title to the final trust will be confirmed as being subject to the public trust and to the Oak Street to 9th Avenue legislative grants provided all of the following conditions are met, including approval by the commission:*

(a) *The lands or interests in lands to be exchanged or sold by the port and over which the public trust and the Oak Street to 9th Avenue legislative grants are to be terminated have been filled and reclaimed and consist entirely of dry lands lying landward of the*

1 *present line of mean high water which are no longer needed or*
2 *required for the purposes of the public trust or the Oak Street to 9th*
3 *Avenue legislative grants.*

4 *(b) The consideration for exchange of the Oak Street to 9th*
5 *Avenue exchange lands shall be the conveyance into public trust*
6 *ownership of the trust exchange parcel which shall become public*
7 *trust land subject to the legislative grants, including the Oak Street*
8 *to 9th Avenue legislative grants or to the legislative grants*
9 *applicable to the remainder of the port, as appropriate, and shall*
10 *meet all of the following criteria:*

11 *(1) The value of the trust exchange parcel shall be equal to or*
12 *in excess of the value of the Oak Street to 9th Avenue exchange*
13 *lands in which the public trust and the Oak Street to 9th Avenue*
14 *legislative grants are terminated.*

15 *(2) The trust exchange parcel shall be selected by the port and*
16 *approved by the commission according to the following criteria*
17 *and order of priority:*

18 *(A) First priority shall be for land that lies within the area of*
19 *the estuary plan.*

20 *(B) Second priority shall be for land contiguous to the area of*
21 *the estuary plan.*

22 *(C) Third priority shall be for land that lies within or adjacent*
23 *to the Middle Harbor.*

24 *(D) Fourth priority shall be for land that lies within or adjacent*
25 *to the Outer Harbor provided, however, that any first or second*
26 *priority land acquired in accordance with this section shall*
27 *support or relate to the purposes or objectives of the estuary plan*
28 *to the extent these purposes or objectives are consistent with the*
29 *public trust. If the only land available within the first priority has*
30 *been designated in the estuary plan for a use that is not consistent*
31 *with the public trust, then that land may be acquired by the port,*
32 *but its acquisition shall support or relate to the purposes or*
33 *objectives of the public trust and the legislative grants. It is further*
34 *provided that any third or fourth priority land acquired in*
35 *accordance with this section shall be for land that supports the*
36 *purposes or objectives of the port improvement plans to the extent*
37 *that their purposes and objectives are consistent with the public*
38 *trust and the legislative grants.*

39 *(c) The port shall demonstrate to the commission that the trust*
40 *exchange parcel selected by the port complies with the criteria of*

1 *this section. If the commission, when considering an exchange,*
2 *does not approve the trust exchange parcel and the commission*
3 *determines that the port has made all reasonable efforts to locate*
4 *a trust exchange parcel, an exchange agreement entered into*
5 *consistent with Section 8 may provide that the port may deposit and*
6 *the commission accept on behalf of the port the funds to be used*
7 *to acquire a trust exchange parcel and sequester those funds in the*
8 *Land Bank Fund established pursuant to Section 8610 of the*
9 *Public Resource Code to be held solely for acquisition of a trust*
10 *exchange parcel on which the port and the commission both agree*
11 *according to the priorities in this section.*

12 *(d) All moneys resulting from the sale of the portion of the*
13 *after-acquired trust lands authorized in this act shall be retained*
14 *by the port, and shall be used only for purposes consistent with the*
15 *public trust and the legislative grants and this act, and shall be*
16 *accounted for in compliance with Section 6306 of the Public*
17 *Resources Code.*

18 *(e) Any sale of the portion of the after-acquired trust lands shall*
19 *occur only in conjunction with a simultaneous exchange of the*
20 *state's sovereign title in the Oak Street to 9th Avenue exchange*
21 *lands pursuant to Section 8.*

22 *(f) Upon the completion of any sale of the portion of the*
23 *after-acquired trust lands authorized in this act by the recording*
24 *of a deed from the port to a private party for the portion of the*
25 *after-acquired trust lands authorized to be sold, any right, title, or*
26 *interests sold therein shall be free from the public trust.*

27 *(g) Following the exchange and sale, the final trust lands shall*
28 *be improved and enhanced for, including, but not limited to, open*
29 *space, public access, a marina and boat launch, commercial*
30 *services to visitors as necessary, animal and bird habitat, and*
31 *circulation to and along the waterfront.*

32 *(h) The final trust lands will provide lateral public access to the*
33 *water along the estuary.*

34 *(i) The Oak Street to 9th Avenue exchange lands exchanged into*
35 *private ownership and over which the public trust and the Oak*
36 *Street to 9th Avenue legislative grants will be terminated constitute*
37 *a relatively small parcel of granted tide and submerged lands*
38 *within the city.*

1 (j) Upon completion of the sale and exchange contemplated by
2 this section, the final trust lands shall meet all of the following
3 criteria:

4 (1) The geographic configuration and extent of the final trust
5 lands shall substantially conform to the geographic configuration
6 and extent of the trust lands shown in the diagram in Section 13;
7 provided that in no event shall the geographic configuration and
8 extent, including depth as measured perpendicularly from the
9 shoreline, length as measured laterally along the shoreline, and
10 total square footage, of these lands be less than the geographic
11 configuration and extent of these lands shown in the diagram in
12 Section 13. However, the port, subject to the approval of the
13 commission, may make minor changes in the geographic
14 configuration and extent of final trust lands if the port and the
15 commission both find that this change would better further public
16 trust purposes. Any increase in the geographic configuration and
17 extent of the final trust lands shall be as required by the
18 commission, considering needs for public uses in walkways, parks,
19 marinas and boat launch, habitat areas, and visitor-serving
20 commercial facilities including, but not limited to, food service;
21 provided, however, that in determining whether any increase in
22 geographic configuration and extent of the final trust lands is
23 required, the commission shall take into account the
24 determinations of the port and the city to meet reasonable needs
25 for the above-described public trust uses as reflected in local
26 entitlements for any development on the Oak Street to 9th Avenue
27 property.

28 (2) No uses shall be allowed on the final trust lands other than
29 public parks, open space, public access to and circulation along
30 the shoreline, marinas and boat launch, habitat areas, and
31 visitor-serving commercial including, but not limited to, food
32 service, as the port and the commission determine may be required
33 to support the activities and goals of the estuary plan or the Oak
34 Street to 9th Avenue legislative grants.

35 SEC. 5. Any exchange or sale made or accomplished pursuant
36 to this act is hereby found to be of statewide significance, and,
37 therefore, any ordinance, charter provision, or other provision of
38 local law inconsistent with this act shall not be applicable to the
39 exchange or sale.

1 SEC. 6. *The exchange and sale authorized by this act shall be*
2 *subject to the following conditions for the protection of the public*
3 *trust:*

4 (a) *Streets and other transportation facilities located on public*
5 *trust lands are designed to be compatible with the public trust, and*
6 *to serve primarily public trust purposes of access to shoreline*
7 *improvements and shoreline circulation rather than serving*
8 *nontrust purposes.*

9 SEC. 7. *Any lands or interests in lands exchanged or*
10 *confirmed in public trust ownership following an exchange and*
11 *sale shall be in the city and subject to the public trust and to the*
12 *Oak Street to 9th Avenue legislative grants or the legislative*
13 *grants, as applicable, as sovereign lands of the state, including the*
14 *trust exchange parcel and the final trust lands.*

15 SEC. 8. (a) *The commission may approve an exchange of*
16 *public trust lands that meets the requirements of this act and enter*
17 *into an exchange agreement. Pursuant to this authority, the*
18 *commission shall establish appropriate procedures for*
19 *effectuating the exchange including, but not limited to, the*
20 *following:*

21 (1) *Procedures for completing the exchange in phases. The*
22 *procedures shall ensure that, after each phase, the cumulative*
23 *value of the trust exchange parcel is equal to or greater than the*
24 *cumulative value of the Oak Street to 9th Avenue exchange lands*
25 *exchanged out of the trust, and that the lands or interests in lands*
26 *exchanged or confirmed into the trust at each phase are configured*
27 *in a way that furthers the purposes of the overall exchange,*
28 *including, but not limited to, having access to streets as finally*
29 *configured within the Oak Street to 9th Avenue property.*

30 (2) *Procedures for ensuring that lands or interests in lands are*
31 *not exchanged or confirmed into the trust until all remedial action*
32 *necessary to protect human health and the environment with*
33 *respect to hazardous substances has been completed as determined*
34 *by federal, state, or local agencies with jurisdiction.*

35 (3) *Procedures for reviewing the port's selection of the trust*
36 *exchange parcel and for insuring that all reasonable efforts have*
37 *been made to locate a trust exchange parcel.*

38 (b) *The commission may not approve the exchange and sale of*
39 *any trust lands unless it finds all of the following:*

1 (1) *The configuration of trust lands within the Oak Street to 9th*
2 *Avenue property upon completion of the exchange and sale meets*
3 *the requirements of subdivision (j) of Section 4 and includes all*
4 *lands within the Oak Street to 9th Avenue property that are*
5 *presently waterward of the mean high water line.*

6 (2) *The final layout of streets in the property will provide access*
7 *to the public trust lands and be consistent with the beneficial use*
8 *of the remaining public trust lands.*

9 (3) *The trust exchange parcel will promote the purposes or*
10 *objectives of the estuary plan, legislative grants, or the port*
11 *improvement plans, as applicable, to the extent these purposes or*
12 *objectives are consistent with the public trust.*

13 (4) *The trust exchange parcel has been selected according to*
14 *the criteria in paragraph (2) of subdivision (b) of Section 4.*

15 (5) *With respect to the exchange as finally configured and*
16 *phased, the value of the trust exchange parcel to be exchanged into*
17 *the trust is equal to or greater than the value of the Oak Street to*
18 *9th Avenue exchange lands.*

19 (6) *The Oak Street to 9th Avenue exchange lands over which*
20 *the public trust will be terminated have been filled and reclaimed,*
21 *those parcels consisting entirely of dry land lying landward of the*
22 *present line of mean high water, and are no longer needed or*
23 *required for the purposes of the public trust and constitute a*
24 *relatively small portion of the lands originally granted to the city,*
25 *and that the exchange will not result in substantial interference*
26 *with public trust uses and purposes, nor with the Oak Street to 9th*
27 *Avenue legislative grants.*

28 (7) *The proposed exchange is consistent with this act.*

29 (8) *Lateral public access to the water along the entirety of the*
30 *Oak Street to 9th Avenue property will continue to be provided.*

31 (9) *The trust exchange parcel and final trust lands shall be held*
32 *subject to the public trust, and the terms of this act, including the*
33 *Oak Street to 9th Avenue legislative grants and the legislative*
34 *grants, as applicable.*

35 (10) *No substantial interference with public trust uses and*
36 *purposes shall ensue by virtue of the proposed exchange.*

37 (11) *The exchange is in the best interests of the statewide*
38 *public.*

39 (12) *The port has approved the exchange.*

1 (c) For purposes of effectuating the exchange authorized by
2 this act, the commission may do all of the following:

3 (1) Receive and accept on behalf of the state the trust exchange
4 parcel to be brought into the public trust as an exchange parcel in
5 exchange for the Oak Street to 9th Avenue exchange lands in which
6 the public trust and the Oak Street to 9th Avenue legislative grants
7 are terminated.

8 (2) Receive and accept on behalf of the state a conveyance from
9 the port of interests held by virtue of the Oak Street to 9th Avenue
10 legislative grants or as after-acquired trust lands as part of an
11 exchange or sale of public trust lands as approved, including the
12 final trust lands.

13 (3) Convey to the port or to its designee by patent all of the
14 right, title, and interest of the state in lands that are to be free of
15 the public trust and the Oak Street to 9th Avenue legislative grants
16 upon completion of the exchange of the Oak Street to 9th Avenue
17 exchange lands as authorized by this act and as approved by the
18 commission.

19 (4) Convey to the city or port by patent all of the right, title, and
20 interest of the state in sovereign lands subject to the public trust
21 and the terms of this act and the Oak Street to 9th Avenue
22 legislative grants or the legislative grants, as applicable, upon
23 completion of the exchange and sale of lands authorized by this act
24 and as approved by the commission, subject to the terms,
25 conditions, and reservations as the commission may determine are
26 necessary to meet the requirements of this act.

27 (5) Determine or settle through an exchange the title to, or
28 location of, the boundaries of the granted or after-acquired trust
29 lands or any other boundary lines that the commission deems
30 necessary to effectuate the exchange or the purposes of this act.

31 (d) In any case where the state, pursuant to this act, conveys
32 filled tidelands and submerged lands transferred to the port or the
33 city pursuant to the Oak Street to 9th Avenue legislative grants, the
34 state shall reserve all minerals and all mineral rights in the lands
35 of every kind and character now known to exist or hereafter
36 discovered, including, but not limited to, oil and gas and rights
37 thereto, together with the sole, exclusive, and perpetual right to
38 explore for, remove, and dispose of those minerals by any means
39 or methods suitable to the state or to its successors and assignees,
40 except that, notwithstanding the legislative grants, or Section

1 6401 of the Public Resources Code, any such reservation shall not
2 include the right of the state or its successors or assignees in
3 connection with any mineral exploration, removal, or disposal
4 activity, to do either of the following:

5 (1) Enter upon, use, or damage the surface of the lands or
6 interfere with the use of the surface by any grantee or by the
7 grantee's successors or assignees.

8 (2) Conduct any mining activities of any nature whatsoever
9 above a plane located 500 feet below the surface of the lands
10 without the prior written permission of any grantee of the lands or
11 the grantee's successors or assignees.

12 (e) The requirement to reserve minerals and mineral rights
13 described in subdivision (d) shall not apply if the state receives and
14 retains minerals and mineral rights in the trust exchange parcel.

15 SEC. 9. In any case where the state, pursuant to this act,
16 conveys filled tidelands and submerged lands transferred to the
17 city pursuant to the 1911 grant or the 1960 grant, the state shall
18 reserve the right to fish in the waters on which these lands may
19 front with right of convenient access to the waters over these lands
20 for that purpose.

21 SEC. 10. The commission and the port shall work
22 expeditiously toward completing the exchange authorized by this
23 act.

24 SEC. 11. Any agreement for the exchange of, or trust
25 termination over, granted tidelands, or to establish boundary
26 lines, entered into pursuant to this act, shall be conclusively
27 presumed to be valid unless held to be invalid in an appropriate
28 proceeding in a court of competent jurisdiction to determine the
29 validity of the agreement commenced within 60 days after the
30 recording of the agreement.

31 SEC. 12. (a) An action may be brought under Chapter 4
32 (commencing with Section 760.010) of Title 10 of Part 2 of the
33 Code of Civil Procedure by the parties to any agreement entered
34 into pursuant to this act to confirm the validity of the agreement.
35 Notwithstanding any provision of Section 764.080 of the Code of
36 Civil Procedure, the statement of decision in the action shall
37 include a recitation of the underlying facts and a determination
38 whether the agreement meets the requirements of this act, Sections
39 3 and 4 of Article X of the California Constitution, and any other
40 law applicable to the validity of the agreement.

(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, any settlement or exchange agreement entered into pursuant to this act shall be deemed to entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 13. The following diagram is a part of this act:
[diagram to be inserted]

SEC. 14. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands within the port described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.
following:

~~(a) Since the 1850's, the City of Oakland has received grants of tidelands from the Legislature. The grants resulted in the establishment of one of the leading container ports in the United States, the Port of Oakland.~~

~~(b) By virtue of the Charter of the City of Oakland, the Port of Oakland administers, manages, and controls these granted tidelands. The Port of Oakland holds the granted tidelands in trust for the purposes expressed in those grants.~~

~~(c) The Oakland Estuary Reconfiguration and Trust Exchange Act will, in principal part, authorize and establish conditions for an exchange of certain granted tidelands for other lands not now subject to the public trust.~~

~~(d) The proposed exchange is the result of concerns of the public and the Oakland Redevelopment Agency about improvement of and public access to the shoreline of the Oakland Estuary. These concerns focus on a decaying industrial area not operating and not feasible to operate as a maritime container terminal and in which the Port of Oakland controls granted tidelands and owns other lands.~~

~~(e) The exchange is intended to advance the necessary, ongoing redevelopment of the Port of Oakland's land holdings, while promoting and reconfiguring its marine container terminals.~~

1 ~~SEC. 2.—It is the intent of the Legislature to enact the Oakland~~
2 ~~Estuary Reconfiguration and Trust Exchange Act to authorize and~~
3 ~~establish conditions for an exchange of certain tidelands granted~~
4 ~~to the City of Oakland for other lands not now subject to the public~~
5 ~~trust.~~

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